

# Queensland Art Gallery Amendment Bill 2012

## Explanatory Notes

### Short title

The short title of the Bill is the Queensland Art Gallery Amendment Bill 2012.

### Policy objectives and the reasons for them

The reason for the amendment is to enable the Queensland Art Gallery Board of Trustees (Board) to establish a committee, including Board members and non-Board members, to carry on the activities of the Queensland Art Gallery Foundation.

### Achievement of policy objectives

To meet this objective, the Bill will:

- extend the functions of the Board to include developing the art gallery's collection of works of art;
- enable the Board to:
  - establish a foundation committee as a committee of the Board to carry out the activities of the Queensland Art Gallery Foundation;
  - determine membership, including at least two board members (and non-board members if desired) and conditions of membership;
  - determine the name, constitution and procedures for the committee; and
  - delegate its powers to the committee;
- extend the protection from civil liability currently afforded to Board members, to committee members and;

- provide that the Board is a charitable institution.

The establishment of a committee of the Board to undertake the activities of the Queensland Art Gallery Foundation is the most reasonable and appropriate way to regularise the status of the Foundation and to limit restrictions on the Foundation's ability to receive and deal with donations and bequests.

This approach allows the Board to retain control over the management and operations of the Foundation, given the large amount of government and private funds under management and avoids the need to create a new government body for the Foundation.

### **Estimated cost for government implementation**

This amendment will not incur any additional cost. The Foundation's funding and administrative arrangements will remain the same and there will be no financial impacts on the Board under the new structure.

### **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

#### **Legislation should not confer immunity from proceeding or prosecution without adequate justification - *Legislative Standards Act 1992*, section 4(3)(h)**

Clause 9 [Amendment of s55 Protection from Liability of Members]

Clause 9 of the Bill potentially breaches the principle that legislation should not confer immunity from proceeding or prosecution without adequate justification.

The amendment is to extend the protection afforded to Board members to Foundation Committee members in respect of civil liability for an act done, or omission made honestly and without negligence under the Act.

The conferment of immunity is considered justifiable in this instance as the Foundation Committee is established as a Committee of the Board and its function is to raise funds to assist in the fulfilment of the Board's functions. It may only exercise powers delegated to it by the Board. Accordingly, it is equitable that Foundation Committee members have the same protection afforded to Board members.

Adequate safeguards are in place, in that the protection is not afforded unless the member has acted honestly and without negligence; the protection is only against civil, not criminal, liability; and the Board assumes that liability, so other parties dealing with the Board still have an adequate course of redress.

## **Consultation**

The Foundation Council, the Queensland Art Gallery Board of Trustees, and Queensland Art Gallery management have been consulted on the development of the Bill.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland, and is consistent with the *National Gallery of Victoria Act 1966* (Vic) which establishes the National Gallery of Victoria Foundation as a committee of the Council of Trustees of the National Gallery of Victoria.

## **Reasons for non-inclusion of information**

Information regarding alternative ways of achieving the policy objectives has not been included, as the only way to achieve the policy objective [to enable the Queensland Art Gallery Board of Trustees to establish a committee including Board members and non-Board members to carry on the activities of the Queensland Art Gallery Foundation] is to amend the *Queensland Art Gallery Act 1987*.

# **Notes on provisions**

## **Chapter 1**

### **Part 1 Preliminary**

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Clause 1 states that, when enacted, the Bill will be cited as the *Queensland Art Gallery Amendment Act 2012*.

Clause 2 states that the Bill amends the *Queensland Art Gallery Act 1987*.

Clause 3 provides for the definition of “foundation committee” and “foundation committee member”. These definitions apply to a committee of the Board established under section 40C.

Clause 4 extends the functions of the Board to include the development of the Gallery’s collection. As the function of the Foundation Committee is to raise funds to assist in the fulfilment of the Board’s functions and this includes the development of the Gallery’s collection, this amendment extends the Board’s function to align with the function of the Foundation Committee.

Clause 5 allows the Board to delegate its powers to the Foundation Committee as a whole. It is appropriate for the Foundation Committee to receive delegated powers for the purpose of performing its functions only.

Clause 6 replaces the heading for Division 6.

Clause 7 inserts a new Part 2, Division 7 – Foundation Committee.

Under this Division, the amendment inserts section 40C which establishes the Foundation Committee as a committee of the Board, and enables the Board to determine the name, constitution and membership of the Foundation Committee, as well as enabling the Board to dissolve the Foundation Committee.

The amendment provides that the Foundation Committee may consist of at least two Board members, as well as non-Board members, and allows the Board to make available any property the Board considers appropriate to assist the Foundation Committee in performing its functions.

The amendment inserts a new section 40D which provides the functions of the Foundation Committee which are to raise funds to assist in the fulfilment of the Board’s functions.

The amendment inserts a new section 40E which limits the exercise of the Foundation Committee’s powers to those powers delegated to it by the Board, and provides that it is subject to the direction of the Board in exercising its powers. This section provides that the Foundation Committee has the powers necessary to encourage gifts, donations, bequests and legacies of property for the benefit of the Board, but must not

incur a debt. The Foundation Committee's powers of investment are limited to those of the Board.

The amendment inserts a new section 40F which allows the Board to determine how the Foundation Committee may conduct its business and proceedings at meetings. This section allows the Foundation Committee to determine its own procedures where the Board has not done so and if there are no pre-determined procedures, the sections of the Act dealing with proceedings and business of the Board apply to the Foundation Committee.

The amendment inserts a new section 40G that requires a Foundation Committee member to disclose any direct or indirect interests in a matter being considered, or about to be considered, by the Foundation Committee and this disclosure must be recorded in the Foundation Committee's minutes. This requirement mirrors the requirements of the Act for a Board member.

The amendment inserts a new section 40H that prohibits a Foundation Committee member who has a material personal interest in a matter that is being considered by the Foundation Committee from voting on that matter, unless the Foundation Committee resolves otherwise.

Clause 8 is a consequential amendment to section 54 arising from the insertion of the new function of the Board in section 19.

Clause 9 amends section 55 to extend the protection from civil liability to members of the Foundation Committee. It is considered equitable that Foundation Committee Members have the same protection afforded to Board members.

Clause 10 extends the current exclusion in section 55 for illegal borrowing by Board members to Foundation Committee members.

Clause 11 inserts a new section 59 deeming the Board a charitable institution to enable it to receive private ancillary funds that are restricted to donating to charitable organisations.

Clause 12 inserts a new Part 7, Division 4 – Transitional and Validation Provisions for the Amendment Act.

Under this Division, the amendment inserts section 80 which defines the Foundation for the purposes of the Division.

The amendment inserts section 81 which deems gifts, donations, bequests or legacies to, or for the benefit of, the Foundation to be gifts, donations, bequests or legacies to, or for the benefit of, the Board. This section

applies to gifts, donations, bequests or legacies made before or after commencement of the section. This section provides the Board with power to deal with both existing and future gifts, donations, bequests and legacies made out to the Foundation.

The amendment also inserts section 82 which enables the winding up of the current Foundation Council following commencement of the legislation.

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